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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,  
 NATURAL RESOURCES DEFENSE COUNCIL,  
 and PACIFIC ENVIRONMENT, non-profit  
 corporations,

Plaintiffs,

v.

KEN SALAZAR<sup>1</sup>, Secretary of the Interior  
 and U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No. 3:07-cv-06406-MHP

**JOINT STIPULATION TO MODIFY THE CONSENT DECREE AND EXTEND THE  
 SCHEDULE FOR SUBMISSION OF THE YELLOW BILLED LOON 12-MONTH  
 FINDING WITH ~~PROPOSED~~ ORDER**

Plaintiffs, Center for Biological Diversity, et. al. ("CBD"), and Defendants, the U.S. Fish  
 and Wildlife Service and Ken Salazar, Secretary of the Interior (collectively "the Service"), by  
 and through their undersigned counsel, respectfully submit this joint stipulation for the Court's  
 approval.

<sup>1</sup> Under Fed. R. Civ. Pro. 25(d), Defendants have substituted Ken Salazar for Dirk Kempthorne as  
 the current Secretary of the Interior.

1 WHEREAS:

- 2 • On April 5, 2004, Plaintiffs submitted a petition to list the yellow-billed loon as
- 3 “threatened” or “endangered” under the Endangered Species Act (“ESA”).
- 4
- 5 • On June 6, 2007, the Secretary published a 90-day finding under 16 U.S.C. §
- 6 1533(b)(3)(A) that the petition presented substantial information that listing may
- 7 be warranted. 72 Fed. Reg. 31,256 (June 6, 2007).
- 8
- 9 • Under the ESA, the Service had one year from the date it received the Petition to
- 10 make a “12-month finding” that listing the yellow-billed loon as threatened or
- 11 endangered was warranted, warranted but precluded, or not warranted. 16 U.S.C.
- 12 § 1533(b)(3)(B). The Secretary has not issued a 12-month finding.
- 13
- 14 • On December 19, 2007, Plaintiffs filed a Complaint for declaratory and injunctive
- 15 relief, pursuant to the ESA, 16 U.S.C. § 1540(g)(1)(C), and the Administrative
- 16 Procedure Act (“APA”), 5 U.S.C. § 706.
- 17
- 18 • On April 11, 2008, the parties settled this matter and agreed that the Service
- 19 would submit for publication to the Federal Register a 12-month finding on
- 20 Plaintiffs’ petition to list the yellow-billed loon by February 15, 2009. See Doc.
- 21 No. 19.
- 22
- 23 • Officials within the new administration are currently reviewing the yellow-billed
- 24 loon finding and request an additional month to complete their review.

25 THEREFORE:

26 The parties have stipulated to an extension of the 12-month finding for the yellow-billed

27 loon from February 15, 2009 to March 16, 2009.

28 It is so stipulated this 3<sup>rd</sup> day of February, 2009,

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~~[PROPOSED]~~ ORDER

The Parties have stipulated to modify the consent decree in this matter. The terms and conditions of the Joint Stipulation to Modify the Consent Decree are hereby adopted as an ORDER of this Court. It is ordered that:

1. The Service will submit a 12-month finding for the yellow-billed loon to the Federal Register for publication no later than March 16, 2009.

2. The remaining terms of the April 11, 2008 consent decree shall otherwise remain in full force and effect

Dated: this 4th day of February, 2009.

United States District Court



JOINT STIPULATION TO  
MODIFY CONSENT DECREE